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International Court of Justice

H0035 – 0001

Official Transcript of the International Military Tribunal, in the matter of: The United States of America, The French Republic, The United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Georing, et al, Defendants, sitting at Nurnberg, Germany, on 14 January 1946, 1000-1245, Lord Justice Lawrence, presiding.

THE PRESIDENT: Would you have the witness brought in? I think one of the Defendants' Counsel was about to cross-examine him. The Defendants' Counsel don't wish to cross-examine any further?

DR. BABEL (Counsel for the SS and SD): Attorney Babel, who is defending the SS and the SD. I'd like to put the following question to the witness. I need to ask these questions in order for my own information and to clear up previous questions.

CROSS EXAMINATION OF DR. FRANZ BLAHA (Resumed)

QUESTIONS BY DR. BABEL:

Q The witness was from 1941 to 1945 in the concentration camp and in my opinion should be exactly conversant with conditions as they were, and his memory seems to be excellent, as shown by his testimony. Do you know how the connection was of the inmates in the various periods of time, and how these relationships changed, depending on the political and criminal--what was the number of the political and the criminal inmates, about?

A In Dachau it wasn't always the same. There were political and act-actual criminals and the so-called "asocial" elements. Naturally, and I am just speaking about the German prisoners, all other nations were considered political prisoners. Only the German inmates were divided into red, green, and black prisoners. The largest percentage of the German inmates were political inmates.

Q What do you mean by the largest percentage or largest number? About half, three-quarters, one-fourth?

A I am sorry, I didn't hear you.

Q Can you give me figures? About how many of these--half, three-quarters, or how many? Can you give me an approximate number?

A I can say about 5,000 German prisoners. Out of that number, 3,000 were political prisoners; about 2,000 were considered green and black.

Q What was it during the total four or five year period?

A It changed periodically, because many died or were taken away from the Germans and other new ones replaced them. In the last year there were always more and more political prisoners, for many of the green were taken to the front.

Q How was the number, the total number, in 1941, 1943, and 1945?

A Do you mean all of them?

Q Yes. I mean the total number.

A In 1941 we had 9,000; in 1943 we had between 15 to 20,000; and toward the end of 1944 until the beginning of 1945 we had more than 70 to 80,000.

Q Then one more thing; You mentioned, you testified that you yourself worked in the plantations. What do you mean by that?

A By the plantations? It was a large estate of the SS where many herb, medicinal herbs and things of that sort were raised.

Q Was this plantation inside the camp?

A No, it was in the near vicinity of the camp, It was free territory.

Q You mentioned armament works, and I gathered from your testimony that these armament activities were within the camp and partially without; is that true?

A Yes. First they were outside the camp. Then after the bombings certain parts of this work were moved into the inner parts of the concentratio camp.

Q Then, regarding the guards: What was the number; give me the number, about, in 1941?

A For the actual guard duty about three SS companies, but at Dachau there were besides that a large garrison of SS, and from time to time, when it was necessary, from the other departments of the SS guards were taken for this duty. It varies, and it depended on how many guards were needed. For regular duty there were about three companies.

Q. And this guard duty--did they serve guard in these armament works?

A Yes. Every works command had a commando leader. They were drawn from this guard, and these guards--the workers were taken by these guards to their place of work and they were returned by the guards to their place of habitat.

Q And during this time while you were at the camp, did you notice that these guards in their daily activities mistreated inmates?

A Yes; many.

Q Often?

A Yes.

Q What reason?

A The reasons varied, depending upon the nature of the guards or of the commandant.

Q You said you were busy and active?

A Quite busy.

A Did you have opportunity to make these observations?

A Yes. I conducted many autopsies, and the people who had been either shot at work or who had been beaten to death I dissected these bodies and made reports on these autopsies.

Q You said they were shot. Did you see these shootings yourself?

A No.

Q How do you know that?

A I only know that I received the body from the place of work, and my work was to ascertain the cause of death, whether the man was beaten to death, whether the skull was fractured, ribs were fractured, internal hemmorhage, shootings, and a report had to be made--an official report--sometimes; but this was very seldom. When an investigation was made I was called in as witness.

DR. BABEL: Thank you.

THE PRESIDENT: Mr. Dodd, do you wish to reexamine the witness.

MR. DODD: I have no further questions to ask the witness at this time.

THE PRESIDENT: Does any other member of the prosecuting staff want to reexamine? Colonel Pokrowski?

COLONEL POKROWSKI: At this stage of the trial I have no more questions to the witness.

THE PRESIDENT: Then the witness can go.

MR. DODD: I should like to ask the Tribunal at this time to take judicial notice of the findings and the sentences imposed by the Military Court at Dachau, Germany on the 2nd of --

THE PRESIDENT: What date?

MR. DODD: 13th day of December 1945. The findings were dated the 12th and the sentences on the 13th. I have here a certified copy of the findings and the sentences, which I should like to offer as USA Exhibit No. 664.

THE PRESIDENT: Have opies of this been given to the Defendants?

MR. DODD: Yes. They have been sent to the Defendants Counsel Information Room.

THE PRESIDENT: Very well.

MR. DODD: I have one other matter that I should like to take up very briefly before the Tribunal this morning. It is concerned with a matter that arose after I had left the courtroom to return to the United States.

On the 13th of December we offered in evidence Document No. 3421-PS, and USA Exhibit 252 and 254. They were, respectively, the Court will recall, sections of human skin taken from human bodies and preserved, and a human head, the head of a human being, which had been preserved. On the 14th day of December, according to the record, Counsel for the Defendant Kaltenbrunner addressed the Tribunal and complained that the affidavit which was offered of one Pfaffenberger failed to state that the camp commandant at Buchenwald, one Koch, along with his wife, was condemned to death for having committed precisely these atrocities, this business of tanning the skin and preserving the head. And in the course of the discussion before the Tribunal the record reveals that Counsel for the Defendant Bormann, in addressing the Tribunal, stated that it was highly probable that the Prosecution knew that the German authorities had objected to this camp commandant --

THE PRESIDENT: (interposing) Too fast.

MR. DODD: I am sorry. -- had objected to this very camp commandant Koch and, in fact, knew that he had been tried and sentenced for doing precisely these things. And there was some intimation, we feel, that the Prosecution, having this knowledge, withheld it from the Tribunal. Now, I wish to say that we had no knowledge at all about this man Koch at the time that we offered the proof; didn't know anything about him except that he had been the commandant according to the affidavit. But subsequent to this objection we had an investigation made, and we have found that he was tried in 1944, indeed, by an SS court, but not for having tanned human skin nor having preserved a human head, but for having embezzeled some money, for, what the judge tells us who tried him, was the charge of general corruption, and for having murdered someone with whom he had some personal difficulties. Indeed, the judge, a Dr. Morgen, tells us that he saw the tatooed human skin and he saw a human head in

Commandant Koch's office, and that he saw a lamp shade there made out of human skin. But there were no charges at the time that he was tried for having done these things.

I would also point out to the Tribunal that, we say, the testimony of Dr. Blaha sheds further light on whether or not these exhibits, 252 and 254, were isolated instances of that atrocious kind of conduct. We have not been able to locate the affiant. We have made an effort to do so but we have not been able to locate him thus far.

THE PRESIDENT: Locate whom?

MR. DODD: The affiant Pfaffenberger, the one whose affidavit was offered.

THE PRESIDENT: Very well, Mr. Dodd.

DR. KAUFMANN (Counsel for Defendant Kaltenbrunner): The statement just made is undoubtedly significant, but it would be of significance if we had the proof and the documents which served to convict the commandant and his wife, for Kaltenbrunner told me that in the whole SS it was known that the Commandant Koch and his wife were also--and I emphasize "also"----they had been made responsible, and it was known in the whole SS that the size, the magnitude of the penalty was determined by the determination of inhuman demeanor.

THE PRESIDENT: Wait a minute. As you were the Counsel who made the allegation that the Commandant Koch had been put to death for his inhuman treatment, it would seem that you are the party to produce the judgment.

DR. KAUFMANN: I never saw the sentence in my own hand. I depended on the information which Kaltenbrunner gave me personally and verbally.

THE PRESIDENT: It was you who made the assertion. I don't care where you got it from. You made the assertion; therefore it is for you to produce the document.

DR. KAUFMANN: Yes, sir.

COL. PHILLIMORE: May it please the Tribunal: Briefs and document books have been handed in. The documents in the document book are in the order in which I shall refer to them, and the references to them in the briefs are also in that order. On the first page of the brief is set out the extract from Appendix A of the Indictment, which deals with the criminality of this

Defendant.

THE PRESIDENT: Are you dealing first of all with Raeder or with Doenitz?

COL. PHILLIMORE: With Doenitz. My learned friend, Elwyn-Jones, will deal with Raeder later.

THE PRESIDENT: The tribunal will adjourn for ten minutes.

(A recess was taken from 1030-1040)

COL. PHILLIMORE: My Lord, may I proceed?

THE PRESIDENT: Very well.

COL. PHILLIMORE: Briefs and documents books have been handed in. The documents are in the document book in the order in which I shall refer to them, and the references in the brief to the documents are in that same order. On the first page of the brief is set out the extract from the Indictment as Appendix A, which deals with the allegations against this defendant. It sets out the positions he held, and charges him first with promoting the preparations for war, set forth in Count I; secondly, with participating in the military planning and preparation for wars of aggression and wars in violation of international treaties, agreements, and assurances, set forth in Count I and II of the Indictment; and, thirdly, with authorizing, directing, and participating in the war crimes, set forth in Count III of the Indictment, including particularly the crimes against persons and property on the high seas.

Now, if at any place I appear to trespass on Count III, it is with the consent and courtesy of the chief prosecutor for the French Republic.

My Lord, on the second page of the brief are set out first the positions held by the Defendant Doenitz , and the document in question is the first document in the document book, 2887-PS, which has already been put in as United States Exhibit No. 12. The members of the Tribunal will see that after his appointment in 1935 as commander of the Weddigen U-boat flotilla -- that was, in fact, the flotilla to be formed after the World War in 1918. The defendant, who was in effect then commander of U-boats, rose steadily in rank as the U-boat arm expanded until he became an admiral. And then on the 30th of January 1943 he was appointed Gross Admiral and succeeded the Defendant Raeder as commander-in-chief of the German Navy, retaining his command of the U-boat arm. Then on the 1st of May 1945 he succeeded Hitler as leader of Germany.

My Lord, as appears from a number of documents which I shall put in evidence, the defendant was awarded the following decorations: On the 18th of September 1939 the Cluster of the Iron Cross, first class, for the U-boat successes in the Baltic during the Polish campaign. This award was followed on the 21st of April 1940 by the high award of the Knight's Cross to the Iron Cross, whilst on the 7th of April 1943 he received personally from Hitler the Oak Leaf to the Knight's Cross of the Iron Cross as the 223 recipient for his services in building up the German Navy and in particular the offensive U-boat arm for the coming war, which were outstanding. And on that I put in the next document in the document book, D-436, which becomes GB-183. That is an extract from the official publication "Das Archiv" on the defendant's promotion to vice-admiral. It is dated the 27th of September 1940, and I read the last two sentences:

"In four years of untiring and in the fullest sense of the word uninterrupted work of training, he succeeds in developing the young U-boat armed personnel and material till it is a weapon of a striking power unexpected even by the experts. More than three million gross tons of sunken enemy shipping in only one year achieved with only few boats speak better than words of the service of this man."

The next document in the document book, 1463-PS, which I put in as GB-164, is an extract from the diary for the German Navy, 1944 edition, and it serves to emphasize the contents of that last document. My Lord, I won't read from it. The relevant passage is on page two, and if I might summarize that it describes in detail the Defendant's work in building up the U-boat arm, his ceaseless work in training night and day to close the gap of seventeen years during which no training had taken place, his responsibility for new improvements, and for devising the "pack" tactics which were later to become so famous. And then his position is summarized further at the top of page three. If I might read the last two sentences of the first paragraph on that page:

"In spite of the fact that his duties took on unmeasurable proportions since the beginning of the huge U-boat construction program, the chief was what he always was and always will be, leader and inspiration to all the forces under him."

And then the last sentence of that paragraph:

"In spite of all his duties he never lost touch with his men and he showed a masterly understanding in adjusting himself to the changing fortunes of war."

It was not, however, only his ability as a naval officer which won the defendant these high honors: his promotion to succeed the Defendant Raeder as commander-in-chief of the Navy, the personal position he acquired as one of Hitler's principal advisers, and finally, earlier candidates such as Goering having betrayed Hitler's trust, or finding the position less attractive than they had anticipated, the doubtful honor of becoming his successor. These he owed to his fanatical adherence to Hitler and to the Party, to his belief in the Nazi ideology with which he sought to indoctrinate the Navy and the German people, and to his masterly understanding in adjusting himself to the changing fortunes of war, referred to in the diary and which the Tribunal may think, when I have referred them to the document, may be regarded as synonymous with the capacity for utter ruthlessness. His attitude to the Nazi Party and its creed is shown by his public utterances.

I turn to the next document in the document book, D-443, which I put in to become GB-185. It is an extract from a speech made by the defendant at a meeting of commanders of the Navy in Weimar on the 17th of December 1943. It was subsequently circulated by the defendant as a top-secret document for senior officers only and by the hand of officers only. My Lord, if I might read:

"I am a firm adherent of the idea of ideological education. For what is it in the main? Doing his duty is a matter of course for the soldier. But the whole important, the whole weight of duty done, are only present when the heart and spiritual conviction have a voice in the matter. The result of duty done is then quite different to what it would be if I only carried out my task literally, obediently, and faithfully. It is therefore necessary for the soldier to support the execution of his duty with all his mental, all his spiritual energy, and for this his conviction, his ideology are indispensable. It is therefore necessary for us to train the soldier uniformly, comprehensively, that he may be adjusted ideologically to our Germany. Every dualism, every dissension in this connection, or every divergence or unpreparedness imply a weakness in all circumstances.

He in whom this grows and thrives in unison is superior to the other. Then indeed the whole importance, the whole weight of his conviction comes into play. It is also nonsense to say that the soldier or the officer must have no politics." My Lord, the word "perhaps" there is a mistranslation. The sense does not require it. "The soldier embodies the state in which he lives, he is the representative, the articulate exponent of this state. He must therefore stand with his whole weight behind this state.

We must travel this road from our deepest conviction. The Russian travels along it. We can only maintain ourselves in this war if we take part in it with holy zeal, with all our fanaticism.

Not I alone can do this, but it can only be done with the aid of the man who holds the production of Europe in his hand, with Minister Speer. My ambition is to have as many warships for the Navy as possible so as to be able to fight and to strike. It does not matter to me who builds them."

My Lord, that last sentence is of importance in connection with a latter document. The Tribunal will see when I come to this that the Defendant was not above employing concentration camp labor for this purpose.

I put in the next document in the document book, D-640, which becomes GB-186. It is an extract from a speech on the same subject by the Defendant as Commander-in-Chief of the Navy to the Commanders in Chief on the 15th of February 1944. My Lord, it is cumulative except that I think the last two sentences add, if I might read them:

From the very start the whole of the officer corps must be so indoctrinated that it feels itself co-responsible for the National Socialist State in its entirety. The officer is the exponent of the state, the idle chatter that the officer is non-political is sheer nonsense."

Now, the next document is 2878-PS, which I put in to become GB-187. It consists of three extracts from speeches. The first is from a speech made by the Defendant to the German Navy and the German people on Heroes' Day, the 12th of March, 1944.

"German men and women!

".... What would have become of our country today, if the Fuehrer had not united us under National-Socialism! Split into parties, beset with the spreading poison of Jewry and vulnerable to it, and lacking, as a defense, our present uncompromising world outlook, we would long since have succumbed to the burdens of this war and been subject to the merciless destruction of our adversaries..."

My Lord, the next extract is from a speech to the Navy on the 21st of July, 1944. It again shows the Defendant's fanaticism. It is perhaps worth reading the first sentence:

"Men of the Navy! Holy wrath and unlimited anger fill our hearts because of the criminal attempt which shouldhave cost the life of our beloved Fuehrer. Providence wished it otherwise -- watched over and protected our Fuehrer, and did not abandon our German fatherland in the fight for its destiny."

And then he goes on to deal with the fate which should be meted out to these traitors.

The third extract deals with the introduction of the German salute into the armed forces. I don't think I need read it, but as the members of the Tribunal will see, it was the Defendant Keitel and this Defendant who were responsible for the alteration of the salute in the German forces and the adoption of the Nazi salute -- together with Goering, I should have said, the Defendants Goering, Keitel andDoenitz.

The next document is a monitored report of thespeech made on the German wireless by this Defendant, announcing the death of Hitler and his own succession. It is D-444. I put it in to become GB-188, and I read a portion of it. The time is 22.26 marked on the document. I read therefrom:

"It has been reported fromthe Fuehrer's Headquarters that our Fuehrer Adolph Hitler has died this afternoon in his battle headquarters at the Reichschancellory fighting to the last breath for Germany against Bolshevism.

"On the 30th April the Fuehrer nominated Grand Admiral Doenitz to be his successor. The Grand Admiral and Fuehrer's successor will speak to the German nation."

And then, the first paragraph of the speech:

"German men and women, soldiers of the German Armed Forces. Our Fuehrer Adolph Hitler is dead. The German people bow in deepest sorrow and respect. Early he had recognized the terrible danger of Bolshevism and had dedicated his life to the fight against it. Hig fight having ended, he died a hero's death in the capital of the German Reich, after having led an unmistakably straight and steady life."

My Lord, I am afraid there is an error in the translation. It should read "an unmistakably straight..."

Then, that document also contains an order of the day issued by the Defendant, which is very much to the same effect.

Apart from his services in building up the U-boat arm, there is ample evidence that the Defendant, as Officer Commanding U-boats, took part in the planning and execution of aggressive war against Poland, Norway, and Denmark. The next document in the document book, C-126/C, has already been put in as GB-45. It is a memorandum by the Defendant Raeder, dated the 16th of May, 1939 and I will call the attention of the Tribunal to the distribution. The sixth copy went to the Fuehrer der Unterseeboote, that is to say, to the Defendant Doenitz. It is a directive for the invasion of Poland, Fall Weiss, and I won't read it. It has already been read.

The next document, C-126/E, on the second page of that same document, has also been put in as GB-45. It again is a memorandum from the Defendant Raeder's headquarters, dated the 2nd of August, 1939. It is addressed to the fleet, and then Flag Officer, U-boats -- that is, of course, the Defendant -- and it is merely a covering letter for operational directions for the employment of U-boats to be sent out to the Atlantic by way of precaution in the event of the intention to carry out "Fall Weiss" remaining unchanged. The second sentence is important:

"Flag Officer, U-boats, is handing in his operational orders to Slk." -- that is the Seekriegsleitung, the German Admiralty -- "by 12 August. A decision on the sailings of U-boats for the Atlantic will probably be made at the middle of August."

The next document, C-172, I put in as GB-189. It consists of the Defendant's own operational instructions to his U-boats for the operation "Fall Weiss". It is signed by him. It is not dated, but it is clear from the subject matter that its date must be before the 16th of July, 1939. I don't think the substance of the document adds. It is purely an operational instruction, giving effect to the document already put in, C0126/c, the directive by Raeder.

My Lord, the next document, C-122, has already been put in as GB-82. It is an extract from the War Diary of the Naval War Staff of the German Admiralty, dated the 3rd of October, 1939, and records the fact that the Chief of the Naval War Staff has called for views on the possibility of taking operational bases in Norway. It has already been read and I would merely call the Tribunal's attention to the passage in brackets, in the paragraph marked "d".

"Flat Office U-boats already considers such habors extremely useful as equipment -- and supply - bases for Atlantic U-boats to call at temporarily."

The next document, C-5, has already been put in as GB-83. This is from the Defendant, as Flag Office U-boats, addressed to the Supreme Command of the Navy, the Naval War Staff, It is dated the 9th of October, 1939, and it sets out the Defendant's views on the advantages of Trondheim and Narvik as bases. The document proposes the establishment of a base at Trondheim with Narvik as an atlernative.

Now, the next document, C-151, has already been put in as GB-91. It is the Defendant's operation order to his U-boats for the occupation of Denmark and Norway, and the operation order, which is top secret, dated the 30th of Marvh, 1940, is termed "Hartmut". The members of the Tribunal will remember that the document, in the last paragraph, said:

"The naval force will, as they enter the harbor, fly the British flag until the troops have landed, except presumably at Narvick."

The preparations for war against England are perhaps best shown by the disposition of the U-boats under his command on the 3rd of September, 1939, when war broke out between Germany and the Western Allies. The locations of the sinkings in the following week, including that of the Athenia which will be dealt with by my learned friend Mr. Elwin Jones, provide corroboration. On that, I would put in two charts, I put them in as D-652, and they become GB-190.

My Lord, I have copies here for the members of the Tribunal. They have been prepared by the admiralty. There are two charts. The first sets out the disposition of the submarines on the 3rd of September, 1939. There is a note attached to the chart, the top left-hand corner, which I should read:

"This chart has been constructed from a study of the orders issued by Doenitz between 21 August 1939 and 3 September 1939, and subsequently captured. The chart shows the approximate disposition of submarines ordered for the third of September 1939, and cannot be guaranteed accurate in every detail, as the file of captured orders are clearly not complete and some of the submarines show apparently had received orders at sea on or about September 3 to move to new operational areas. The documents from which this chart was constructed are held by the British Admiralty in London".

My Lord, there are two points I would make on that first chart. First, it will be apparent to members of the Tribunal that U-boats which were in thos positions on the 3rd of September of 1939 had left Kiel some considerable time before. The other point which I would make is important in connection with my learned friend Mr. Elwyn Jones' case against the Defendant Raeder, and that is the location of the U-boat U-30. The members of the Tribunal may care to bear it in mind while looking at the charts now.

The second chart sets out the sinkings during the first week of the war, and the location of the sinking of the Athenia will be noted. There is a short certification in the left-hand corner of the Tribunal's copies:

"This chart has been constructed from the official records of the British Admiralty in London. It shows the position and sinkings of the British merchant vessels lost by enemy action in the seven days subsequent to 3 September 1939."

My Lord, I turn to the Defendant's participation in war crimes and crimes against humanity.

The course of the war waged against neutral and allied merchant shipping by the U-boats followed under the Defendant's direction, a course of consistently increasing ruthlessness. The Defendant displayed his masterly understanding in adjusting himself to the changing fortunes of war. From the very early days, merchant ships, both allied and neutral, were sunk without warning, and when operational danger zones had been announced by the German Admiralty, these sinkings continued to take place both within and without those zones. With some exceptions in the early days of the war, no regard was taken for the safety of the cews or passengers of sunk merchant ships, and the announcement claiming a total blockade of the British Isles merely served to confirm the established situation under which U-boat warfare was being conducted without regard to the established rules of international warfare or the requirements of humanity.

The course of the war at sea during the first eighteen months is summarized by two official British reports made at a time when those who compiled them were ignorant of some of the actual orders issued which have since come to hand.

My Lord, I turn to the next document in the document book. It is D-641(a), which I put in to become GB-191. It is an extract from an official report of the British Foreign Office concerning German attacks on merchant shipping during the period 3 September 1939 to September 1940, that is to say, the first year of the war, and it was made shortly after September 1940.

My Lord, if I might quote from the second paragraph on the first page:

"During the first twelve months of the war, 2,031,062 tons of Allied shipping comprising 508 ships have been lost by enemy action. In addition, 769,213 tons of neutral shipping, comprising 253 ships, have also been lost. Nearly all these merchant ships have been sunk by submarine, mine, aircraft or surface craft, and the great majority of them sunk while engaged on their lawful trading occasions. 2,836 Allied merchant seamen have lost their lives in these ships.

"In the last war the practice of the central powers was so remote from the recognized procedure that it was thought necessary to set forth once again the rules of warfare in particular as applied to submarines. This was done in the Treaty of London 1930, and in 1936 Germany acceded to these rules. The rules laid down:

"(1) In action with regard to merchant ships, submarines must conform to the rules of international law to which surface vessels are subjected.

"(2) In particular, except in the case of persistent refusal to stop on being summoned, or of active resistance to visit and search, a war ship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ships' papers in a place of safety. For this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board."

Then, the next paragraph:

"At the beginning of the present war, Germany issued a Prize Ordinance for the regulation of sea warfare, and the guidance of her naval officers. Article 74 of this ordinance embodies the submarine rules of the London Treaty. Article 72, however, provides that captured enemy vessels may be destroyed if it seems inexpedient or unsafe to bring them into part, and Article 73 (i) (ii) makes the same provision with regard to neutral vessels which are captured for sailing under enemy convoy, for forcible resistance, or for giving assistance to the enemy. These provisions are certainly not in accordance with the traditional British view but the important point is that, even in these cases, the Prize Ordinance envisages the capture of the merchantman before its destruction. In other words, if the Germans adhered to the rules set out in their own Prize Ordinance, we might have argued the rather fine legal point with them, but we should have no quarrel with them, either on the broader legal issue or on the humanitarian one. In the event, however, it is only too clear that almost from the beginning of the war the Germans abandoned their own principles and waged war with steadily increasing disregard for international law, and for what is, after all, the ultimate sanction of all law, the protection of human life and property from arbitrary and ruthless attacks."

I pass to the third paragraph on the next page which sets out two instances:

"On the 30th of September, 1939, came the first sinking of a neutral ship by a submarine without warning and with loss of life. This was the Danish ship 'Vendia' bound for the Clyde in ballast. The submarine fired two shots and shortly after torpedoed the ship. The torpedo was fired when the master had already signalled that he would submit to the submarine orders and before there had been an opportunity to abandon ship.

By November submarines were beginning to sink neutral vessels without warning as a regular thing. On the 12th November the Norwegian 'Arne Kjode' was torpedoed in the North Sea without any warning at all. This was a tanker bound from one neutral port to another. The master and four of the crew lost their lives and the remainder werepicked up after many hours in open boats. Henceforward, in addition to the failure to establish the nature of the cargo, another element is noticeable, namely an increasing recklessness as to the fate of the crew."

And then dealing with attacks on allied merchant vessels, certain figures are given.

Ships sunk...........241

Recorded attacks......221

Illegal attacks.......112

At least 79 of these 112 ships were torpedoed without warning.

THE TRIBUNAL (Mr. Biddle): They were not illegally sunk, however?

COL. PHILLIMORE: Yes,sir.

THE TRIBUNAL (Mr. Biddle): According to this, the Germans have been given the benefit of the doubt.

COL. PHILLIMORE: Oh,yes, I should have read that sentence; I am obliged to your Honor.

I pass to the second report, 641/b. It is part of the same document and is put in as GB 191. It is a report covering the next six months from September 1, 1940--

THE PRESIDENT (interposing): Are you not reading page 3?

COL. PHILLIMORE: If your Lordship please, I have read a great deal of the report and there are passages that I had not considered important.

THE PRESIDENT: I haven't myself read it, but I think---

COL. PHILLIMORE: If I might read the first two paragraphs on page 3:

"By the middle of October submarines were sinking merchant vessels without any regard to the safety of the crews. Yet four months later the Germans were still officially claiming that they were acting in accordance with Prize Ordinance. Their own semi-official commentators however, had made the position clearer. As regards neutrals, Berlin officials had early in February stated that any neutral ship that is either voluntarily or under compulsion bound for an enemy port - including contraband control harbours - thereby loses its neutrality and must be considered hostile. At the end of February the cat was let out of the bag by a statement that a neutral ship which obtained a avicert from a British Consul in order to avoid putting into a British contraband control base was liable to be sunk by German submarines, even if it was bound from one neutral port to another. As regards Allied ships, in the middle of November 1939, a Berlin warning was issued against the arming of British vessels. By that date a score of British merchantmen had been illegally attacked by gunfire or torpedo from submarines, and after that date some fifteen more unarmed Allied vessels were torpedoed without warning. It is clear, therefore, that not only was the arming fully justified as a defensive measure, but also that neither before nor after this German threat did the German submarines discriminate between armed and unarmed vessels."

The last paragraph is merely a summing up; it does not add.

Turning to 641/b, which is a similar report covering the next six months, if I might read the first five paragraphs of page 1:

"On the 30th January, 1941, Hitler proclaimed that 'every ship, with or without convoy, which appears before our torpedo tubes is going to be torpedoed." On the face of it, this announcement appears to be uncompromising; and the only qualification provided by the context is that the threats immediately preceding it are specifically addressed to the peoples of the American Continent. German commentators, however, subsequently tried to water it down by contending that Hitler was referring only to ships which attempted to enter the area within which the German 'total blockade' is alleged to be in force.

"From one point of view it probably matters little what exactly was Hitler's meaning, since the only conclusion that can be reached after a study of the facts of enemy warfare on merchant shipping is that enemy action in this field is never limited by the principles which are proclaimed by enemy spokesmen, but solely by the opportunities or lack of them which exist at any given time".

THE PRESIDENT: Colonel Phillimore, isn't this document you are now reading really legal argument?

COL. PHILLIMORE: My Lord, sime of it is. The difficulty is to leave those parts and take in the facts.

THE PRESIDENT: Very well.

COL. PHILLIMORE: The third paragraph, if I might leave the rest of the second, is as follows:

"The effect of the German total blockade is to prohibit neutral ships from entering an enormous stretch of sea round Britain (the area 'extends to about 500 miles west of Ireland, and from the latitude of Bordeaux to that of the Faroe Islands), upon pain of having their ships sink without warning and their crews killed. As a matter of fact, at least thirty-two neutral ships, exclusive of those sailing in British convoys have been sunk by enemy action since the declaration of the 'total blockade'".

Then the last sentence in the following paragraph dealing with sinking of merchant ships without warning:

"Yet, though information is lacking in very many cases, details are available to prove that, during the period under review, at least thirty-eight Allied merchant ships, exclusive of those in convoys, have been torpedoed without warning in or near the 'total blockade' area.

"That the Germans themselves have no exaggerated regard for the area is proved by the fact that of the thirty-eight ships referred to at least sixteen were torpedoed outside the limits of the war-zone."

"My Lord, the next page deals with a specific case illustrating the matter set out above. It is in the first paragraph of that page, the third sentence:

"The sinking of the CITY OF BENARES on the 17th September 1940 is a good example of this. The CITY OF BENARES was an 11,000-ton liner with 191 passengers on board, including nearly 100 children. She was torpedoed without warning just outside the 'war zone," with the loss of 258 lives, including 77 children. It was blowing a gale, with hail and rain squalls and a very rough sea when the torpedo struck her at about 10 p.m. In the darkness and owing to the prevailing weather conditions, at least four of the twelve boats lowered were capsized. Others were swamped and many people were washed right out of them. In one boat alone sixteen people, including 11 children, died from exposure; in another 22 died, including 15 children:

in a third 21 died. The point to be emphasized is not the unusual brutality of this attack but rather that such results are inevitable when a belligerent disregards the rules of sea warfare as the Germans have done and are doing."

I think the rest of that paragraph is not important.

I turn to the next document, 641/c, which is part of GB 191.

THE PRESIDENT: It is clear, I suppose, from that statement of facts that there was no warning whatever given?

COL. PHILLIMORE: No, My Lord.

THE PRESIDENT: We think that you should read the next paragraph too.

COL. PHILLIMORE: If your Lordship pleases.

"There are hundreds of similar stories, stories of voyages for days in open boats in Atlantic gales, of men in the water clinging for hours to a raft and gradually dropping off one by one, of crews being machine-gunned as they tried to lower their boats or as they drifted away in them, of seamen being blown to pieces by shells and torpedoes and bombs. The enemy must know that such things are the inevitable result of the type of warfare he has chosen to employ."

My Lord, the rest is very much to the same general effect.

The next document, 641/c, is merely a certificate giving the total sinkings by U-boats during the war (1939 to 1945) as 2,775 British, Allied and Neutral ships totalling 14,572,435 gross tons.

My Lord, it is perhaps worth considering one example not quoted in the above reports of the ruthless nature of the actions conducted by the defendants' U-boat commanders, particularly as both British and German versions of the sinkings are available. I turn to the next document, "The Sinking of S.S. SHEAF MEAD." That is D.644, which I put in as GB 192. If I might read the opening paragraph:

"The British s/s SHEAF MEAD was torpedoed without warning on 27 May 1940"--

THE PRESIDENT: This is the German account, is it not?

COL. PHILLIMORE: This is actually in the form of a British report. It includes the German account in the shape of a complete extract from the log.

THE PRESIDENT: In other words, Top Secret?

COL. PHILLIMORE: Yes, My Lord, this was at the time a top secret document. That was some while ago.

"The British s/s SHEAF MEAD was torpedoed without warning on 27 May 1940 with the loss of 31 of the crew. The commander of the U-boat responsible is reported to have behaved in an exceptionally callous manner towards the men clinging to upturned boats and pieces of wood. It was thought that this man was kapitaenleutnant Oehrn of U 37: the following extract from his diary for 27 May 1940 leaves no doubt on the matter and speaks for itself as to his behaviour."

Again turning to the relevant extract from the log, on the second page, the time is marked on the document as 1554.

"Surface. Stern is underwater," referring to the ship which has been torpedoed. "Stern is underwater. Bows rise higher. The boats are now on the water. Lucky for them. A picture of complete order. They lie at some distance. The bows rear up quite high. Two men appear from somewhere in the forward part of the ship. They leap and rush with ground bounds along the deck down to the stern. The stern disappears. A boat capsizes. Then a boiler explosion. Two men fly through the air, limbs outstretched. Bursting and crashing. Then all is over. A large heap of wreckage floats up. We approach it to identify the name. The crew have saved them. We fish out a buoy. No name on it. I ask a man on the raft. He says, hardly turning his head - Nix Name. A young boy in the water calls 'Help, help, please." The others are very composed. They look damp and somewhat tired. An expression of cold hatred is on their faces. On to the old course. After washing the paint off the buoy, the name comes to light: Greatafield, Glasgow. 5006 gross registered tons."

"Under the old course" means merely that the U-boat makes off.

Then the next page of that document contains an extract from the report of the Chief Engineer of the SHEAF MEAD. The relevant paragraphs are the first and the last:

"When I came to the surface I found myself on the port side, that is, nearest to the submarine, which was only about five yards away. The submarine Captain asked the steward the name of the ship, which he told him, and the enemy picked up one of our lifebuoys, but this had the name GRETASTON on it, as this was the name of our ship before it was changed to SHEAF MEAD last January."

In the last paragraph:

H0035 - 0028

"She had cut-away bows, but I did not notice a net cutter. Two men stood at the side with boat hooks to keep us off.

"They cruised around for half an hour, taking photographs of us in the water. Otherwise they just watched us, but said nothing. Then she submerged and went off, without offering us any assistance whatever."

THE PRESIDENT: Is there any suggestion in the German report that any warning was given?

COL. PHILLIMORE: No, My Lord. It is quite clear, indeed, that it was not.

Under the time 1444 there is a description of the sighting of the ship and the difficulty in identifying, and then at the top of the page:

"The distance apart is narrowing. The steamship draws in quickly, but the position is still 40-50. I cannot see the stern yet. Tube ready. Shall I or not? The gunnery crews are also prepared. On the ship's side a yellow cross in a small, square, dark blue ground. Swedish? Presumably not. I raise the periscope a little. Hurrah, a gun at the stern, an ack-ack gun or something similar. Fire! I cannot miss"; and then the sinking.

Now that it is possible to examine some of the actual documents by which the defendant and his fellow conspirators issued their orders in disregard of international law, you may think the compilers of the above reporters understated the case. These orders cover not only the period referred to in the reports, but also the subsequent course of the war. It is interesting to note in them the steps by which the defendants progressed. At first they were content with breaching the rules of international law to the extent of sinking merchant ships, including neutral ships, without warning where there was a reasonable prospect of being able to do so without discovery. The facts already quoted show that the question of whether whips were defensively armed or outside the declared operational areas was in practice immaterial.

I go to the next document in the Document Book, C 191, which I put in as GB 193. That is a memorandum by the German Naval War Staff, dated 22 September 1939. It sets out:

"Flag Officer. U-boats intends to give permission to U-boats to sink without warning any vessels sailing without lights." Reading from the third sentence:

"In practice there is no opportunity for attacking at night, as the U-boat cannot identify a target which is a shadow in a way that entirely obviates mistakes being made. If the political situation is such that even possible mistakes must be ruled out, U-boats must be forbidden to make any attacks at night in waters where French and English Naval forces or merchant ships may be situated. On the other hand, in sea areas where only English units are to be expected, the measures desired by F. O. U-boats can be carried out; permission to take this step is not to be given in writing, but need merely be based on the unspoken approval of the Naval War Staff. U-boat commanders would be informed by word of mouth and the sinking of a merchant ship must be justified in the

War Diary as due to possible confusion with a warship or an auxiliary cruiser. In the meanwhile, U-boats in the English Channel have received instructions to attack all vessels sailing without lights."

Now I go to the next document, C 21, which I put in as GB 194. My Lord, this document consists of a series of extracts from the war diary of the German Naval War Staff of the German Admiralty. The second extract, at page 5, recites a conference with the head of the Naval War Staff. "Report on the 2 January 1940," and then reading:

"1) Report by Ia"--That is the Staff Operations Officer on the War Staff.

THE PRESIDENT: Shouldn't you read above that, Paragraph 1 (b)?

COL. PHILLIMORE: Yes, if your Lordship pleases. It is important. The others are much to the same effect. If I might read it:

"Report on Ia." This is one report by Ia on Directive of Armed Forces High command of 30 December. "According to this, the Fuehrer, on report of Commander-in-Chief in Navy, has decided:

"(a) Greek merchant vessels are to be treated as enemy vessels in the zone blockaded by U.S.A. and Britain.

"Both measures may be taken with immediate effect."

The next extract, report by Ia, that is, the Staff Officer Operations on the Naval War Staff on Directive of Armed Forces High Command, dated 30 December, "referring to intensified measures in naval and air warfare in connection with 'Fall Gelb'.

"In consequence of this Directive, the Navy will authorize, simultaneously with the general intensification of the war, the sinking of U-boats, without any warning, of all ships in those waters near the enemy coasts in which mines can be employed. In this case, for external consumption, pretence should be made that mines are being used. The behaviour of, and use of weapons by, U-boats should be adapted to this purpose."

And then the third extract, dated 6 January 1940:

"...the Fuehrer has in principle agreed (see minutes of report of C. in C. Navy of 30 December) to authorize firing without warning whilst maintaining the pretence of mine hits in certain parts of the American blockaded zone."

Well, then the order is given to flag officer submarines carrying out that decision.

The next extract, dated the 18th of January, 1940, adds to some extent and if I may read it:

"The High Command of the Armed Forces has issued the following Directive dated 17th of January, cancelling the previous order concerning intensified measures of warfare against merchantmen.

"The Navy will authorize, with immediate effect, the sinking without warning of U-Boats of all ships in those waters near the enemy coasts in which the use of mines can be pretended."

My Lord, that is an extension of the area.

"U-Boats must adapt their behavior and employment of weapons to the pretence, which is to be maintained in these cases, that the hits were caused by mines. Ships of the United States, Italy, Japan and Russia are exempted from these attacks."

Well, then there is a note emphasizing the point about maintaining the pretense of mine hits and the last extract is, I think, purely cumulative.

The next document, C-118 I put in as GB 195. This is an extract from the BDU War Diary, that is to say the Defendant's War Diary. It is dated the 18th of July, 1941 and it consists of a further extension of that order by cutting down the protected categories.

"Supplementary to the order forbidding, for the time being, attacks on U.S. warships and merchant vessels in the operational area of the North Atlantic, the Fuehrer has ordered the following:

"1. Attacks on U.S. merchant vessels sailing in British or U.S. convoys, or independantly is authorized in the original operational area which corresponds in its dimensions to the U.S. blockade zone and which does not include the sea-route U.S. to Iceland."

As the members of the Tribunal will have seen from these orders, at one date the ships of a particular neutral under certain conditons could be sunk whilst those of another could not. It would be easy to put before the Tribunal a mass of orders and instances to show that the attitude to be adopted toward ships of particular neutrals changed at various times. The point is that the defendant conducted the U-Boat war against neutrals with complete cynicsm and opportunism. It all depended on the political relationship of Germany toward a particular country at a particular time whether her ships were sunk or not.

My Lord, I turn to the next document in the Document Book, D-642, which I put in as G.B. 196. My Lord, this is a series of orders, the first I should say of a series of orders leading up to the issue of an order which enjoined the U-Boat commanders, not merely to abstain from rescuing crews, which is the purpose of this order, not merely to give them no assistance, but to deliberately annihilate them.

My Lord, in the course of my proof of this matter, I shall call two witnesses. The first witness will give the Court an account of a speech made by the defendant at the time that he issued the order, describing the policy, or his policy toward the recovery of Allied troops -- that it must be stopped at all costs.

The second witness is the officer who actually briefed crews on the order.

My Lord, this document is an extract from the standing orders of the U-Boat Command, an extract from Order Number 154 and it is signed by the defendant.

"Paragraph e. Do not pick up survivors and take them with you. Do not worry about the merchant-ship's boats. Weather conditions and distance from land play no part. Have a care only for your own ship and strive only to attain your next success as soon as possible. We must be harsh in this war. The enemy began the war in ord er to destroy us, so nothing else matters."

THE PRESIDENT: What is the date of that?

COLONEL PHILLIMORE: My Lord, that order, the copy we have, is not dated but a later order, Number 173, which was issued concurrently with an operational order, is dated the 2nd of May 1940. The Tribunal may take it, it is earlier than the 2nd of May, 1940. My Lord, that is a secret order.

THE PRESIDENT: Earlier than May 1940?

COLONEL PHILLIMORE: Earlier than May 1940.

It was, however, in 1942 when the United States entered the war with its enormous ship-building capacity that the change thus brought about necessitated a further adjustment in the methods adopted by the U-Boats and of the defendant and the defendant was guilty of an order, which intended not merely the sinking of merchant ships, not merely the abstention from rescue of the crews, but their deliberate extermination.

My Lord, the next document in the Document Books shows the course of events, D-423, and I put it in as G.B. 197. It is a record of a conversation between Hitler and the Japanese Ambassador Oshima, in the presence of the Defendant Ribbentrop, on the 3 of January 1942.

"The Fuehrer, using a map, explains to the Japanese Ambassador the present position of marine warfare in the Atlantic, emphasizing that he considers his most important task is to get the U-Boat warfare going in full swing. The U-Boats are being re-organized. Firstly, he had recalled all U-Boats operating in the Atlantic, As mentioned before, they would now be posted outside United States ports. Later, they would be off Freetown and the larger boats even as far down as Capetown."

And then, after further details:

"After having given further explanations on the map, the Fuehrer pointed out, that however many ships the United States built, one of their main problems would be the lack of personnel. For that reason, even merchant ships would be sunk without warning with the intention of killing as many of the crew as possible. Once it gets around that most of the seamen are lost in the sinkings, the Americans would soon have difficulties in enlisting new people. The training of sea-going personnel takes a very long time. We are fighting for our existence and our attitude cannot be ruled by any humane feelings. For this reason he must give the order that in case foreign seamen could not be taken prisoner, which is not always possible on the sea, U-boats were to surface after torpedoing and shoot up the lifeboats.

"Ambassador Oshima heartily agreed with the Fuehrer's comments, and said that the Japanese too are forced to follow these methods."

My Lord, the next document, D-446, I put in as GB-198. I do not propose to read it. It is an extract from B.D.U., War Diary of the 16th of September, 1942, and it is part of the story in the sense that it was on the following day that the order I complain of was issued, and the Defense will, no doubt, wish to rely on it. It records an attack on a U-boat, which was rescuing survivors, chiefly the Italian survivors of the Allied liner "Laconia," when it was attacked by an Allied aircraft.

My Lord, the next document, D-630, I put in as GB-199. It contains four documents. The first is a top secret order, sent to all commanding officers of U-boats from the Defendant's headquarters, dated 17th of September, 1942.

"1. No attempt of any kind must be made at rescuing members of ships sunk, and this includes picking up persons in the water and putting them in lifeboats, righting capsized lifeboats and handing over food and water. Rescue runs counter to the rudimentary demands of warfare for the destruction of enemy ships and crews.

"2. Orders for bringingin Captains and Chief Engineers still apply.

"3. Rescue the shipwrecked only if their statements will be of importance for your boat.

"4. Be harsh, having in mind that the enemy takes no regard of women and children in his bombing attacks on German cities."

Now, my Lord, that is of course a very carefully worded order. Its intentions are made very clear by the next document on that same page, which is an extract from the Defendant's War Diary, and I should say there, as appears from the copy handed into the Court, the War Diary is personally signed by the Defendant Doenitz. It is the War Diary entry for the 17th of September, 1942.

"The attention of all commanding officers is again drawn," and I would draw the Tribunal's attention to the word "again," "to the fact that all efforts to rescue members of the crews of ships which have been sunk, contradict the most primitive demands for the conduct of warfare by annihilating enemy ships and their crews. Orders concerning the bringing in of the Captains and Chief Engineers still stand."

The last two documents on that page consist of a telegram from the Commander of the U-boat "Schacht" to the Defendant's headquarters and the reply. "Schacht" had been taking part in the rescue of survivors from the "Laconia." The telegram from "Schacht," dated the 18th of September, 1942, reads:

"163 Italians handed over to 'Annamite.' Navigating Officer of 'Laconia' and another English Officer on board." And then it goes on setting out the position of English and Polish survivors in boats.

The reply sent on the 20th:

"Action as in wireless telegram message of 17th of September was wrong. Boat was detailed to rescue Italian allies and not for the rescue of English and Poles."

It is a small point, but of course details the means before the bombing incident ever occurred.

And then as for the next document, D-663, that was issued later and may not yet have been inserted in the Tribunal's document book; D-663 I put in as GB-200. My Lord, this is an extract from an operation order, "Operation Order Atlantic No. 56," dated the 7th of October, 1943, and the copy put in is part of sailing orders to a U-boat. As I shall prove through the second witness, although the date of this order is the 7th of October, 1943, in fact it is only a reproduction of an order issued very much earlier, in the autumn of 1942.

"Rescue ships: A so-called rescue ship is generally attached to every convoy, a special ship of up to 3000 gross registered tons, which is intended for the picking up of survivors after U-boat attacks. These ships are for the most part, equipped with a ship-borne aircraft and large motor-boats, are strongly armed with depth-charge throwers, and very manoeuverable, so that they are often called U-boat traps by the commander."

And then, the last sentence -- "In view of the desired destruction of ship's crews, their sinking is of great value."

If I might just sum up those documents, it would appear from the War Diary entry of the 17th of September, that orders on the lines discussed between Hitler and Oshima were, in fact, issued but we have not captured them. It may be they were issued orally and that the defendant awaited a suitable opportunity before confirming them. The incident of the bombing of the U-boats detailed to rescue the Italian survivors from the "Laconia", afforded the opportunity and the order to all commanders was issued. Its intent is very clear when you consider it in the light of the War Diary entry. The wording is, of course, extremely careful but to any officer of experience its intention was obvious and he would know that deliberate action to annihilate survivors would be approved under that order.

You will be told that this order, although perhaps unfortunately phrased, was merely intended to stop a commander from jeopardising his ship by attempting a rescue, which had become increasingly dangerous, as a result of the extended coverage of the ocean by Allied aircraft, and that the notorious action of the U-Boat Commander "Eck", in sinking the Greep steamer "Peleus" and then amchine gunning the crew on their rafts in the water, was an exception and that, although it may be true that a copy of the order was on board, this action was taken solely, as he himself swore, on his own initiative.

I would make the point to the Tribunal that if the intention of this order was to stop the rescue attempts in the interests of the preservation of the U-boat, first of all it would have been done by calling attention to Standing Order 154.

Secondly, this very fact would have been prominently stated in the order. Drastic orders of this nature are not drafted by experienced staff officers without the greatest care and an eye to their possible capture by the enemy.

Thirdly, if it was necessary to avoid the risks attendant on surfacing, not only would this have been stated but there would have been no question of taking any prisoners at all except possibly in circumstances where virtually no risk in surfacing was to be apprehended.

Fourthly, the final sentence of the first paragraph would have read very differently.

And Fifthly, if, in fact, and the Prosecution for one moment do not accept it, the defendant did not mean to enjoin murder, his order was so worded that he cannot escape the responsibility which attaches to such a document.

My Lord, I would call my first witness, Peter Heisig.

PETER JOSEF HEISIG took the stand.

BY THE PRESIDENT:

Q What is your name?

A My name is Peter Josef Heisig.

Q Will you spell it, please?

A H-e-i-s-i-g.

THE PRESIDENT: Say this:

"I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold nothing."

(The witness repeated the oath in German).

BY COLONEL PHILLIMORE:

Q Peter Josef Heisig, are you an Oberleutnant officer in Germany?

A I am Oberleutnant Zur See in the German Navy.

Q And were you captured on the 27th of December, 1944, and are now held as a prisoner of war?

A Yes.

Q Did you swear an affidavit on the 27th of November, 1945?

A Yes.

Q And is that your signature?

(A document was submitted to the witness)

COLONEL PHILLIMORE: My Lord, that is the document D-566.

THE PRESIDENT: Which one?

COLONEL PHILLIMORE: It is the next document in the book.

A That is the document I signed.

COLONEL PHILLIMORE: I put that in as GB 201.

BY COLONEL PHILLIMORE:

Q Will you take your mind back to the autumn of 1942? What rank did you hold at that time?

A I was Midshipman at the second U-Boat Training Division.

Q Were you attending a course there?

A I took part at the training course for U-Boat Officers of the Watch.

Q Do you remember the last day of the course?

A On the last day of the course, Gross Admiral Doenitz, who was then Commander in Chief of the U-Boats, held an inspection tour of this second training division.

Q And what happened at the end of his tour?

A At the end of his visit -- not at the end of his visit, but rather during his visit, Grand Admiral Doenitz gave a speech to the officers who were being trained there.

Q Can you fix the date of this visit?

A I remember the approximate date; it must have been at the end of September or the beginning of October 1942.

Q Now, will you give the Tribunal -- speaking slowly -- an account of what Admiral Doenitz said in his speech?

A Grand Admiral Doenitz, in his speech, made the point clear that the successes of the U-boats had gone back, and enemy activities were the cause of that. New ack ack guns had been developed, which was to make it possible for the U-boats to fight off enemy aircraft. Hitler had personally given the assurance that U-boats had received a priority over all other form of weapons and were to be equipped with these ack ack guns. It was to be expected that the old successes were to be reached again in a few months.

Grand Admiral Doenitz then mentioned his friendship and agreement with Hitler, and spoke about the German armament program.

There was a question about another matter, regarding an article in the paper. Since the United Nations were building more than a million tons of merchant shipping, Grand Admiral Doenitz covered this point. He doubted, at first, the credibility of this report and said that a figure by President Roosevelt was the basis of this report. Grand Admiral Doenitz then shortly mentioned Roosevelt personally, about the American production program and the potential program. He further mentioned that the Allies had a great difficulty, and that was commands of their ships. There was a shortage of personnel for their ships. Seamen considered the route across the Atlantic very dangerous because German U-boats were sinking Allied ships in great numbers, and many of the Allied seamen had been torpedoed more than once. News like that spreads, and seamen are kept back from going to sea once more. Some of them were trying to evade Atlantic duty so that the Allied authorities were forced, if it should be possible to impress the seamen.

These signs are considered favorable by the Germans, firstly, that the Allies are manufacturing much shipping; and, on the second point, that the Allies have many difficulties in manning these newly built ships.

This was the statement by Grand Admiral Doenitz. The personnel problem of the Allies is very serious; the losses of personnel are hitting the Allies especially hard, for one reason because they have few reserves and, on the other hand --

Q (Interposing): I don't want to interrupt you, but did he say anything about rescues at all? You have told us about the Allied losses and how serious they were.

A Yes, he mentioned rescues, but I would like to speak about that later. Grand Admiral Doenitz mentioned that the losses of the Allies were heavy, first of all because they had no reserves and, for the second reason, that the training of seamen takes a long time, and he could not understand how, at this point, the boats --

THE PRESIDENT (Interposing): Just a moment. I don't think we want to hear the whole of Admiral Doenitz' speech. We want to hear the material parts of it.

COLONEL PHILLIMORE: No, my Lord.

BY COLONEL PHILLIMORE:

Q Now, you have dealt with the question of losses. Will you come to the crucial part of the speech, at the end, and deal with that? What did the Grand Admiral go on to say?

DR. THOMA: The testimony of the witness does not concern me directly, but I have certain problems that --

THE PRESIDENT (Interposing): Just a moment. Will you state who you are and whom you appear for? You are Dr. Thoma, are you not?

DR. THOMA: Yes.

THE PRESIDENT: And whom do you appear for?

DR. THOMA: Rosenberg.

THE PRESIDENT: Yes.

DR. THOMA: According to German law, and German criminal law, the witness has to tell everything that he knows about a matter. If he is asked about a speech by Grand Admiral Doenitz, then he may not -- at least according to German law -- enumerate those things to the Tribunal, which, according to the opinions of the Prosecution, are unfavorable to the Defendant. I believe that this basic principle should apply, that if a witness is questioned in these proceedings the same principle applies also.

THE PRESIDENT: This Tribunal is not governed by German law. I have already stated that the Tribunal does not desire to hear the whole of the speech of Admiral Doenitz. That is all.

DR. THOMA: I beg your pardon. I did not hear all of this explanation.

THE PRESIDENT: What I said was that the Tribunal is not bound by German law, and that I have already said that the Tribunal did not desire to hear from this witness all of Admiral Doenitz' speech.

It will be open to any of the counsel for the defendants to cross-examine this witness. Your intervention is therefore entirely unnecessary.

BY COLONEL PHILLIMORE:

Q Now, will you deal with the crucial parts of the Grand Admiral's speech?

A Grand Admiral Doenitz continued his speech as follows: Under the given situation he could not understand how German U-boats, contrary to their own safety, would let the ships be saved; it would be absolutely working for the enemy, and these rescued crews would travel again on newer command ships.

Now, the total war at sea was to be instituted. The men -- the seamen -- were to be a target for the U-boats, as well as the ships, and throu this it was to be made impossible for the Allies to use this personnel again on a new ship. On the other hand, it was to be expected that in America and the other allied countries a strike was to be expected, for already a part of the seamen did not want to go back to sea.

Now if, according to our tactics, the sea war was to be harsher, it would have heavy respercussions along those lines. If this line is considere harsh, we should also remember that our wives and our families at home were being bombed.

That was the speech of Grand Admiral Doenitz in its main points.

Q Now, about how many officers were present and heard that speech?

A I have nothing practical to give you the number of men, I can only give you an estimate. I would say roughly 120 officers.

COLONEL PHILLIMORE: My Lord, the witness is available for cross-examination.

THE PRESIDENT: Does the United States Prosecutor wish to ask any question?

(No response)

The Soviet Prosecutor?

(No response)

The French Prosecutor?

(No response).

Now, any of the defendants' counsel may cross-examine the witness.

DR. KRANZBUEHLER: Sir.

THE PRESIDENT: Are you counsel for Doenitz?

DR. KRANZBUEHLER: I represent Grand Admiral Doenitz.

THE PRESIDENT: Counsel will understand that what I said to Dr. Thoma was not intended to interfere with your cross-examination; it was only intended to save time. The Tribunal did not desire to hear unimportant passages in the Defendant Doenitz' speech. Therefore, they did not want to hear them from this witness. However, you are at liberty to ask any questions that you please.

BY DR. KRANZBUEHLER:

Q You are that Peter Josef Heisig that you say you are?

A Yes.

Q On which boat were you, and who was your commander?

A I was on 877 and Finkeisen was the Commander.

Q Please repeat your answer.

A I was on U-877, and the Commander was Finkeisen.

Q Were you successful?

A The boat was brought into -- the boat was sunk.

Q Before you had ever sunk an enemy ship?

A Yes.

Q Which enemy weapon?

A A depth charge sunk us. Two Canadian frigates had sighted our U-boat and destroyed it through depth bombs.

Q Your testimony today differs slightly from the statement that you made on the 27th of November, and in an essential point. How did you come to this statement of the 27th of November?

A I made the statement in order to favor my comrades and colleagues who were before a court-martial and who had been sentenced to death for the murder of shipwrecked sailors.

Q Your declaration, your affidavit, starts with the words that you had received reports that German sailors were accused of murder, and you felt yourself duty-bound to give the following affidavit.

Which report had you received, and when?

A At the beginning of the Hamburg proceedings against Eck and his officers, the crew. At that time I was a prisoner of war in England and I heard news over the radio and from the papers that these officers were to be sentenced. Since I knew one of these accused officers, Lieutenant Hoffmann and since I had two or three times conversed with him on this subject, I felt duty-bound to come to his assistance through my testimony and to help him through my testimony.

Q In your hearing on the 27th of November were you not told that the death sentence against Eck and Hoffmann had already been set?

A I do not know whether it was on the 27th of November. I know only that here I was told of the fact that the death sentence had been carried out. The date I cannot remember; I was in several hearings.

H0035 - 0046

Q. Can you, after knowledge of these facts, state that in the speech given by Grand Admiral Doenitz that the point was made that shipwrecked sailors were to be shot?

A. No; we gathered that from the order, that total war was to be carried on against ships and men, and traceable to the bombings. And we believed and we talked about this on the way back. We were convinced that Admiral Doenitz meant that. He did not speak clearly; he did not express himself clearly.

Q. Did you speak with any of your superiors at this school about this point?

A. On the same day I left school, but I can remember that one of my superiors, whose name I cannot remember -- and in which connection I had this conversation I don't recall -- we did speak about this same topic and we were told or advised that only officers were to be at the bridge of the ship in order to destroy shipwrecked sailors, if this possibility should arise, and if it should be advisable.

Q. One of your superiors told you that?

A. Yes, but I cannot remember the connection or where. I was taught much by superiors, and on many things.

Q. Was it at school?

A. No; I left school the same day.

Q. At school were you kept up on the orders of war?

A. Yes, we were advised.

Q. In these orders was there one word that shipwrecked sailors were to be shot or that their rescue materials were to be destroyed?

A. Those things were not covered, but I believe there was an innuendo by Rollmann, and we believed that a short time prior to that there was a general order that rescue measures were prohibited and that, on the other hand, radical measures of naval war were to be taken. That is, it was to be carried on in a harsher manner.

Q. In the prohibition of rescue measures, do you see the same as the shooting of shipwrecked sailors?

H0035 - 0047

Please answer my question. Do you see the same?

A. No.

Q. Thank you.

DR. KRANSBUEHLER: I have no further questions.

THE PRESIDENT: Dr. Thoma, I am afraid the Tribunal will have to adjourn now, and I have an announcement to make. You may cross-examine tomorrow.

DR. THOMA: Thank you.

THE PRESIDENT: As I have already said, the Tribunal will not sit in open session this afternoon.

The announcement that I have to make is in connection with the organizations which are alleged to be criminal under Article 9 of the Charter, and this is the announcement:

The Tribunal has been giving careful consideration to the duty imposed upon it by Article 9 of the Charter.

It is difficult to determine the manner in which the representatives of the named organizations shall be permitted to appear in accordance with Article 9, without considering the exact nature of the case presented for the Prosecution.

For this reason, the Tribunal has come to the conclusion that at this stage of the trial, with many thousands of applications being made, the case for the Prosecution should be defined with more precision than appears in the Indictment.

In these circumstances, therefore, it is the intention of the Tribunal to invite argument from the counsel for the Prosecution and for the Defense, at the conclusion of the case by all prosecutors, in regard to the questions hereinafter set forth.

The question which need further consideration are as follows:

1. The Charter does not define a criminal organization, and it is therefore necessary to examine the tests of criminality which must be applied and to decide the nature of the evidence to be admitted.

Many of the applicants who have made requests to be heard assert that they were conscripted into the orgainzation, or that they were ignorant of the criminal purposes of the organization, or that they were innocent of any unlawful acts.

It will be necessary to decide whether such evidence ought to be received to rebut the charge of the criminal character of the organization, or whether such evidence ought more properly to be received at the subsequent trials under Article 10 of the Charter, when the organizations have been declared criminal, if the Tribunal so decides.

2. The question of the precise time within which the named organization is said to have been criminal is vital to the decision of the Tribunal.

The Tribunal desires to know from the Prosecution at this stage whether it is intended to adhere to the limits of time set out in the Indictment.

3. The Tribunal desires to know whether, in the light of the evidence, any class of persons included within the named organizations should be excluded from the scope of the declaration, and which, if any.

In the indictment of the Leadership Corps of the Nazi Party, the Prosecution have reserved the right to request that Politische Leiter of subordinate grades or ranks, or of other types or classes, be exempted from further proceedings without prejudice to other proceedings or actions against them.

Is it the intention of the Prosecution to make any such request? If so, it should be done now.

4. The Tribunal would be glad if the Prosecution would also:

(a) Summarize in respect of each named organization the elements which in their opinion justify the charge of being a criminal organization.

(b) Indicate what acts on the part of individual defendants, indicted in this trial-in the sense used in Article 9 of the Charter--justify declaring the groups or organizations, of which they are members, to be criminal organizations.

(c) Submit in writing a summary of proposed findings of fact as to each organization, with respect to which a finding of criminality is asked.

The Tribunal hopes it is not necessary to say to the Prosecution that it is not seeking to interfere with the undoubted right of the Prosecution to present its case in its own way, in the light of the full knowledge of all the documents and facts which it possesses; but the duty of the Tribunal under Article 9 of the Charter makes it essential at this time to have the case clearly and precisely defined.

This announcement will be communicated to the Chief Prosecutors and to defense counsel in writing.

The Tribunal will now adjourn until 10 o'clock tomorrow morning.

(Whereupon at 1305 hours the hearing of the Tribunal adjourned, to reconvene at 1000 hours 15 January, 1946)